IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1808 OF 2006

Faiyaz Ahmed Mohammed Umar Shaikh. ..Applicant.
Vs.
The State of Maharashtra. ..Respondent.

Mr.K.M.Sangani, Advocate for the Applicant.
Mr.S.D.Shinde, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 28/7/2006.

P.C.

1. This is an application for grant of bail. The applicant alongwith six others are shown as an accused in C.R.No.69/2001 registered by Lashkar Police Station for alleged offences under Section-302, 324, 342, 120B read with 34 of the I.P.C., Section 135 of the Bombay Police Act and Under Sec. 2, 25 of the Arms Act. The prosecution case is that one Faizulla Khan was a proprietor of the construction-Estate Agent firm by name M/s. Galaxy Zodiac Combine. On 5.5.2001 he was sitting in his rented office 222, Arora Towers, Camp at Pune with two customers and office peon by name Dinesh. At that time, suddenly one person entered the office, caught hold Dinesh. He placed weapon like revolver on Dinesh and threatened him to keep silence by facing a wall. Two other persons went into the room where Faizulla Khan was sitting with two customers and

assaulted him with choppers. Two customers who were sitting and the assailants thereafter left the premises. The crime was registered as C.R.No.69/2001 by Lashkar Police Station on the statement of the office Peon Mr. Dinesh. During the investigation, the Lashkar Police Station could not find any clue and therefore, the case was transferred to the Crime Branch, Pune City.

2. The Crime Branch of Unit II of Pune City Police took up the investigation. Upon the result of the investigation and the material collected by them they concluded that the offence had been committed by members of one Goyal Ganaga Group with whom deceased had land dispute. They concluded that some of the directors of Goyal Ganga group had engaged a noted gangster by name Chota Rajan. Eight persons were arrested and ultimately a charge sheet came to be filed in the Sessions Court against the eight arrested persons and some unidentified persons. It appears that while the Sessions Case was pending, one Ravi Pardeshi who was a hardened criminal came to be arrested in some other crime on 10.5.2002. During his interrogation, he confessed to the police that he had received a contract for killing Faizulla Khan from one Smt. Shalutai Budhiwant and her son Hemant who had land dispute with deceased. It was revealed to the police that the contract amount paid to him was in the form of flat worth of Rs.3,00,000/- and

vehicle worth of Rs.1,80,000/- The investigation of the present crime was therefore, once again taken up by the C.I.D. by virtue of the said disclosure. The D.G.P. Maharashtra State by order dated 21.8.2002 transferred the present investigation to C.I.D. The C.I.D. then conducted investigation. It appears that the person who supposed to have given a contract of killing to Ravi Pardeshi was Shalutai and she was arrested. In due course, she has been granted bail by the Sessions Court. However, her son Hemant is absconding, notwithstanding the fact that his anticipatory bail application has been rejected.

3. The material against the present applicant consists of two statements recorded by the C.I.D. One is the statement of Amol Desai recorded on 20.6.2005 i.e. more than four years after the incident. The second statement is of Raju Ramchandra Labhade recorded on 31.5.2005 and the same is recorded after similar delay of four years. Witness Amol Desai in his statement dated 20.6.2005 stated that in October-November,2000, one Arjun Sarvayya who is one of the co accused introduced him to the present applicant and the present applicant informed him that Faizulla Khan was to be killed. He told him that he will reply later. After 3-4 days co accused Arjun came to Amol Desai and they together went to the house of the applicant. The

applicant informed them that they have to go Pune on the next day and introduced him to one Yogesh. On the next day, Amol Desai, Arjun Sarvayya, Yogesh and the present applicant Faiyaz went to Pune. They went to Lokesh Hotel and stayed there for 15 days. During this period one Sudhir Khade who is also co-accused residing in Pune city showed them the office of the deceased. Sudhir Khade told them the work was to be done after Diwali. In the year 2000 i.e. 10 to 12 days after the Diwali, Arjun, Yogesh and the present applicant returned to Pune. Once again they stayed in Lokesh hotel and thereafter, they met to Sudhir Khade. They stayed there 8 to 10 days. During that stay the present applicant and Sudhir Khade explained them plan of killing Faizulla Khan. Sudhir Khade handed over the revolver to Amol Desai. Amol Desai when asked him whether he was to go alone to kill Faizulla Khan. He was told that Arjun and Yogesh will accompany him. However, the plan was not carried out even on this occasion. On the third occasion before leaving for Pune, the present applicant introduced to him with one Raju Labhade who was running a public booth near the house of the applicant. In Jan.2001 the applicant, Amol Desai and Raju Ramchandra Labhade again came to Pune and Amol Desai was made to stay alone at Shiv Prasad lodge. Raju Labhade went to reside with his relations. Amol Desai stayed in the lodge for about 8 to 10 days. During this period he met

the present applicant Faiyaz. He asked Sudhir Khade as to when the work was to be done. But Amol Desai then left the lodge saying that his father was not well. Sudhir Khande allowed him to go by giving 200/- Rupees for his bus fare. However, the applicant and Raju Labhade stayed there. As regards the aforesaid statements, my prima facie observation is that the same is recorded after four years. However, even this statement disclose events which end in Jan./Feb.2001. The offence in the present case was committed 3-4 months later on 5.5.2001. Witness Amol Desai throws no light as to what happened after Jan.2001.

4. The next statement recorded is of witness Raju Labhade. This statement is also recorded after over four years. He claims to be a person close to the applicant since he runs a STD booth near the Masjid where the applicant was residing. He claims to have accompanied the applicant and Sudhir Khade at Pune on one occasion. He states that whenever he used to go to Pune alongwith Sudhir Khade there used to be talking about the killing of Faizulla Khan. He was introduced to One Ravi Pardeshi by Sudhir Khade and that the present applicant Faiyaz, Sudhir Khade and Ravi Pardeshi used to be sitting and talking about the killing of Faizulla Khan. He stated that he had so accompanied and stayed in the said lodge in December,2000. This

statement is also does not throw any light as to what happened from Jan.2001 till May,2005.

5. It appears that though the present applicant and other accused by names Bharat Edke, Arjun Sarvayya, Gautam Kadam and Sudhir Khade were all arrested, though in the F.I.R. eye witness Dinesh had stated that he would be in a position to identify the assailants, surprisingly, no identification parade has been held till today, though the arrest of this accused has taken place in the year 2005. On query as to why identification parade is not held, I am informed that attempts were made to trace the eye witness but it was found that he had gone to West Bengal. It appears that as far as the eight accused persons who were made earlier accused in the very same crime on the basis of the investigation carried out by the Crime Branch, Pune, application was made under Section 321 of the Cr.P.C. and they were acquitted and another case for extortion was filed against them.

6. I find that there is substantial delay in the recording of the statement of two witnesses namely Amol Desai and Raju Labhade. It appears that both these persons were actually involved in the conspiracy as per their statements and their statements would be in the nature of accomplice evidence. Their statements also

throw no light on the activities of the applicant or other accused for several months prior to the incident. There is no identification of the applicant by the eye witness or persons who are supposed to be the co conspirators. On being asked as to what was the link to connect the present group of alleged conspirators with lady Shalutai and her son who have supposed to be the person, who have given contract of killing. It is stated that link can only be established through the statement of accused Ravi Pardeshi made to the police. Obviously such a statement is not admissible in evidence.

7. One more fact is that eye witness Dinesh talks about one of the customer sitting in the office of the deceased and according to him he was known to him as Vasim. Both Amol Desai and Raju Labhade in their statements have referred the name of the present applicant who is supposed to be one of the customer of deceased Faizulla as Faiyaz. There is no identification parade as far as present applicant is concerned and there is no supplementary statement of eye witness Dinesh recorded to indicate that the present applicant was a person Vasim and he had seen him sitting in the office.

8. The learned A.P.P. pointed out that the bail

application of Sudhir Khade has been rejected by this court. I have perused the order passed by (V.M.Kanade,J.). The applicant was represented by another advocate. It appears that it is rejected on the ground that there is some material to show that Sudhir Khade was main conspirator. It was contended by the Advocate for the present applicant that the present applicant was not heard in that matter. Now the material is placed before the court and the applicant has prayed for grant bail. Notwithstanding the order dated 15.1.2006 concerning another applicant, the applicant prays for bail as because material against him is insufficient. Having perused the matter and the analysis of the same as aforesaid, I am inclined to grant bail to the applicant for the reasons which are enumerated in the aforesaid paragraphs.

. It is therefore, directed that pending his trial in pursuance of C.R.No.69/2001 registered by Lashkar Police Station, the present applicant may be released on bail in the sum of Rs.25,000/- with one surety in the like amount subject to the condition that he will report to the Investigating Officer, C.I.D. Pune once in a month on every first Monday between 11.00 to 5.00 p.m.till the disposal of the trial.

. Application is disposed off.

(R.S. MOHITE, J.)